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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.
No. 191.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES and FARMER BROS. Co., a corporation, the real party in interest,

Petitioners,

vs.

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

Respondents.

BRIEF FOR RESPONDENTS GAY LILLEFLOREN AND RUSSELL MARKS.

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SUBJECT INDEX

PAGE

Opinion below 1

Jurisdiction 1

Statute involved 2

Statement of the case 2

Summary of argument 6

Argument 8

I.

Petitioner's action in dismissing the complaint herein with prejudice renders the instant proceeding moot 8

II.

The constitutionality of the California "Hot Cargo" Act, considered by the California Supreme Court in the Blaney case, is not involved in the present appeal 11

III.

Petitioner is not in a position to assert that it has been denied rights under the Federal Constitution, even assuming that there is merit in such contention, which respondent deny 15

A. The California courts did not deny petitioner relief 15

B. Petitioner did not raise the issue that it was denied federal rights before the California courts and is precluded from doing so here 15

C. Petitioner ignores the construction placed on the injunctive decree herein by the California Supreme Court 17

D. Petitioner has no right, under the laws of California, to relief from alleged "secondary" activities of respondents 19

E. Petitioner has not been denied equal protection of the law 20

F. Petitioner has a remedy, indeed an exclusive remedy, under the National Labor Relations Act as amended 22

Conclusion 23

TABLE OF AUTHORITIES CITED

CASES. PAGE

Allen Bradley, Local 11, v. Wisconsin Employment Relations Board, 315 U. S. 740 23
American Federation of Labor v. Swing, 312 U. S. 321 14
Bakery & Pastry Drivers v. Wohl, 315 U. S. 769 14
Bell, In re, 19 Cal. 2d 488, 122 P. 2d 22 20
Bethlehem Steel Co. v. New York State Board, 30 U. S. 767 22
Blaney, In re, 30 A. C. 648, 180 P. 2d 892 ..... 2, 6, 7, 11, 12, 13, 14
Bob-Lo Excursion Co. v. Michigan, 333 U. S. 28 13
Buck's Stove & Range Co. v. American Federation of Labor, 219 U. S. 581, 55 L. Ed. 345 9
Carpenters Local v. Ritter's Cafe, 315 U. S. 722 20
Carpenters Local v. Ritter's Cafe, No. 527, Oct. Term, 1941, pp. 14-17 20
DeJonge v. Oregon, 299 U. S. 353 14
Duke Power Co. v. Greenwood County, 299 U. S. 259, 81 L. Ed. 178 9
Fortenbury v. Superior Court, 16 Cal. 2d 405, 106 P. 2d 411 20
Gompers v. Buck's Stove & Range Co., 221 U. S. 419, 55 L. Ed. 797 ..... 8, 10
Hill v. Florida, 325 U. S. 538 22
Home Loan Owners' Corp. v. Hoffman, 134 F. 2d 313 10
Hughes v. Superior Court, 32 A. C. 896 ..... 13, 19
Lisse v. Local Union, 2 Cal. 2d 312, 41 P. 2d 314 19
Lund v. Auto Mechanics, 16 Cal. 2d 374 20
Lynch v. New York, etc., 293 U. S. 52, 79 L. Ed. 191 16
Lyons, In re, 27 Cal. App. 2d 293 19
McKay v. Retail Automobile Salesmen, 16 Cal. 2d 311, 106 P. 2d 373 19
Memphis & Charleston Ry. Co. v. Pace, 282 U. S. 241 13
Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 321 U. S. 281 13
Morris, In re, 194 Cal. 63 10
Northwestern Pacific Ry. Co. v. Lumber & Saw Mill Workers, 31 A. C. 448 ..... 7, 20

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BLEED THROUGH

PAGE

Parkinson Co. v. Building Trades Council, 154 Cal. 581, 98 Pac. 1027 19
Perlman v. 322 West 72nd Company, 127 F. 2d 716 10
Pierce v. Stablemen's Union, 156 Cal. 70, 103 Pac. 324 19
Porterfield, In re, 28 Cal. 2d 91, 168 P. 2d 706 ..... 12, 20
Senn v. Tile Layers' Protective Ass'n, 301 U. S. 468 17
Shafer v. Registered Pharmacists, 16 Cal. 2d 379, 106 P. 2d 403 20
Smith Metropolitan Market v. Lyons, 16 Cal. 2d 389, 106 P. 2d 414 20
St. Pierre v. United States, 319 U. S. 40, 87 L. Ed. 1199 9
Steiner v. Long Beach Local, 19 Cal. 2d 676 20
Thornhill v. Alabama, 310 U. S. 88 14
Truax v. Corrigan, 257 U. S. 312 17
Union Labor Hospital Assn. v. Vance Redwood Lumber Co., 158 Cal. 551 19
United States v. C. I. O., 335 U. S. 106 14

STATUTES

California Code of Civil Procedure, Sec. 1209, Subsec. 5 ..... 2, 10
California Constitution, Art. I, Sec. 9 12
California Labor Code, Secs. 1131-1136 (Stats. 1941, Chap. 623, par. 1, p. 2079) 2
California Penal Code, Sec. 166, Subd. 4 10
Judicial Code, Sec. 237(b) 1
National Labor Relations Act, Sec. 8(b)(1) 22
National Labor Relations Act, Sec. 8(b)(2) 22
National Labor Relations Act, Sec. 8(b)(4)(A) 22
National Labor Relations Act, Sec. 303 22
United States Constitution, Fourteenth Amendment 15, 17, 19

TEXTBOOKS

17 Corpus Juris Secundum, Sec. 7, p. 8 10
18 Hughes' Federal Practice, p. 248 9

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Petitioners,

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GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

Respondents.

BRIEF FOR RESPONDENTS GAY LILLEFLOREN AND RUSSELL MARKS.

Opinion Below.

The opinion of the Supreme Court of California [R. 215] is reported in 31 Adv. Cal. Rep. 460, 190 P. 2d 265.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended. Petition for writ of certiorari was granted on October 11, 1948. Respondents insist, however, that this Court has no jurisdiction of this matter, no federal question being in issue or having been decided by the court below.

Statute Involved.

The respondents herein were convicted of contempt under Section 1209, subsection 5 of the Code of Civil Procedure of the State of California. The so-called California "Hot Cargo" Act (Secs. 1131-1136 of the Labor Code of California, Statutes 1941, Ch. 623, par. 1, p. 2079) was declared unconstitutional by the Supreme Court of California in *In re Blaney,* 30 Adv. Cal. Rep. 648, 180 P. 2d 892, and is not in issue in this case.

Statement of the Case.

Petitioner, in its Statement of the Case, has failed to apprise this Court of all of the facts relevant to a determination of whether any federal question is involved in this appeal and whether this Court has jurisdiction to either reverse or affirm the opinion herein of the Supreme Court of California. For instance, petitioner has failed to inform this Court, as it had previously failed to inform the Supreme Court of California, that it had dismissed its complaint herein (on which the restraining order and conviction for contempt is predicated) *with prejudice* as early as October 9, 1947. Furthermore, petitioner has failed to indicate to this Court that the issue of whether petitioner was denied due process of law or equal protection of the laws in violation of the Fourteenth Amendment (petitioner's question No. 2 under "Questions Presented") was not presented to or decided by either the trial court or the California Supreme Court. Finally, petitioner has failed to inform this Court that the trial court

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in the contempt proceeding found that the purpose of all respondents' and defendant union's alleged activities was to bring about the unionization of petitioner's employees [R. 170-172]. On the contrary, the Supreme Court of California specifically found that the restraining order was not predicated upon any theory of purpose to require the signing of a closed-shop agreement, but found that the restraining order "did not forbid the making of such demand [for a closed-shop contract] or engaging in the labor activity for such purpose" [R. 216].

Since the injunctive decree, for violation of which respondents were convicted of contempt in the trial court, is referred to in numerous portions of the brief, it may be well to reproduce it here. It reads in its entirety as follows [R. 54]:

"TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE—MAY 22, 1946.

"Upon reading the verified complaint and affidavits filed by plaintiff in this action, and it appearing therefrom to the satisfaction of the court that this is a proper case for the issuance of a temporary restraining order, and that great and irreparable injury will result to plaintiff herein before this matter could be heard on notice, and good cause appearing therefor:

"It is hereby ordered that defendants, and each of them, be and appear before the above named court in the court room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, California, on the

31st day of May, 1946, at the hour of 9:30 A. M., then and there to show cause, if any they have, why an order should not be made by which they, and each of them, their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending final determination of this action, and pending the hearing of this order, defendants and each of them, and all such persons are, and each of them is, hereby restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts:

"(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer,

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supplier or carrier of plaintiff, to cease performing any services for said employers, or any of them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping, or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

"(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement;

"(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined."

The opinion of the Supreme Court of California [R. 215-216], involved in this appeal, is extremely brief and holds simply that the injunctive decree in question is too broadly worded under principles of both California common law and California constitutional law. The Court specifically pointed out that the decree did not forbid the alleged illegal conduct of respondents concerning which petitioner complains.

Summary of Argument.

Under the "Questions Presented," both in its petition for certiorari and in its principal brief, petitioner has raised the following two questions:

1. Is the decision of the Supreme Court of California in *In re Blaney,* 30 Adv. Cal. Rep. 648, 180 P. 2d 892, declaring unconstitutional the so-called California "Hot Cargo" Act (on which decision the California Supreme Court predicated its holding that the injunctive decree herein was illegal) erroneous under decisions of this Court?

2. Has petitioner been denied either due process of law or equal protection of the laws contrary to the Fourteenth Amendment by virtue of the fact that the injunctive decree herein (for violation of which respondents were convicted of contempt in the trial court) was declared illegal by the Supreme Court of California?

Respondents assert that neither of these questions can properly be considered by this Court for the following reasons:

1. The entire case is now moot, petitioner having withdrawn its complaint herein on which both the injunctive decree and the civil contempt conviction for violation of the injunctive decree are based.

2. The "Hot Cargo" Act considered in the *Blaney* case, as well as the injunctive decree in the instant case, were declared invalid by the Supreme Court of California on the grounds that they violated the state as well as the

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federal Constitution, and the determination of the Supreme Court of California concerning the validity of state laws under the state Constitution are conclusive on this Court. In any event, the decisions of this Court indicate that the decision of the California Court in the *Blaney* case is proper on federal grounds alone.

3. The issue of whether the petitioner was denied due process or equal protection of the laws was not raised in or considered by the courts below and so cannot be considered by this Court. In any event, the Supreme Court of California did not deny petitioner the relief it sought, the California Supreme Court having held simply that the decree as drawn was too broad and indefinite, the decree not being limited to activities pursuant to the alleged unlawful purpose claimed by petitioner, namely, the obtaining of a closed-shop contract in the absence of a majority vote. The alleged secondary activity of respondents or defendant union herein, unrelated to any unlawful purpose such as the procuring of an illegal closed-shop agreement, was not illegal in California under either statutory or common law, and petitioner thus has no right to protection against such activity. In any event, the petitioner had a remedy, indeed an exclusive remedy, before the National Labor Relations Board. The granting of protection to a common carrier, as a third party to a labor dispute, in the *Northwestern Pacific Ry. Co. v. Lumber & Saw Mill Workers'* case, 31 A. C. 448, and the refusal to grant petitioner, as a primary party, relief against so-called "secondary picketing" in the present case does not deny petitioner equal protection of the laws, the *Northwestern Pacific* case being entirely distinguishable by virtue of the fact that plaintiff there was the third party and was a common carrier, bound by law to perform certain services.

ARGUMENT.

I.

Petitioner's Action in Dismissing the Complaint Herein With Prejudice Renders the Instant Proceeding Moot.

Unbeknown to respondents or to the California Supreme Court, petitioner, on October 9, 1947, dismissed the complaint herein *with prejudice*. The temporary restraining order herein, for violation of which respondents were convicted in the trial court of contempt, is predicated upon such complaint, and accordingly it would appear that the instant proceeding is moot if the contempt was of a civil rather than a criminal nature. In any event, the claim of petitioner under the second of its "Questions Presented" (that it was denied due process of law or equal protection of the laws by reason of denial to it of relief under the allegations of its complaint) is clearly rendered moot, petitioner by its own action having indicated that it is in no need of relief.

The case of *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 419, 55 L. Ed. 797, is in point. There, the appeal by Samuel Gompers from a conviction for contempt for violation of a labor injunction was held to be rendered moot by virtue of the fact that the litigation between the parties had been settled. This Court made the following applicable statements in that case:

> "When the main case was settled, every proceeding which was dependent on it, or a part of it, was also necessarily settled,—of course, without prejudice to

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the power and right of the court to punish for contempt by proper proceedings. . . . . If this had been a separate and independent proceeding at law for criminal contempt, to vindicate the authority of the court, with the public on one side and the defendants on the other, it could not, in any way, have been affected by any settlement which the parties to the equity cause made in their private litigation.

"But, as we have shown, this was a proceeding in equity for civil contempt, where the only remedial relief possible was a fine, payable to the complainant. The company prayed 'for such relief as the nature of its case may require,' and when the main cause was terminated by a settlement of all differences between the parties, the complainant did not require, and was not entitled to, any compensation or relief of any other character. The present proceeding necessarily ended with the settlement of the main cause of which it is a part."

See, in addition to the foregoing:

Hughes' "Federal Practice," Vol. 18, p. 248;

Duke Power Co. v. Greenwood County, 299 U. S. 259, 81 L. Ed. 178;

Buck's Stove & Range Co. v. The American Federation of Labor, 219 U. S. 581, 55 L. Ed. 345;

St. Pierre v. The United States, 319 U. S. 40, 87 L. Ed. 1199.

Cf.:

Home Loan Owners' Corp. v. Hoffman, C. C. A. 8, 134 F. 2d 314;

Perlman v. 322 West 72nd Company, 127 F. 2d 716, C. C. A. 2 (1942).

The decision in the *Gompers* case and in the other cases above cited indicate that if the contempt proceedings herein were civil in nature, the present case has now become moot by virtue of the fact that the litigation has been settled by withdrawal of the complaint. That the contempt proceedings were in fact civil in nature is indicated by the fact that (1) Farmer Brothers, a private party, rather than the Superior Court of Los Angeles County, is prosecuting the present appeal and claims to be the real party in interest, and (2) the conviction for contempt herein was rendered under Section 1209, subdivision 5, of the Code of Civil Procedure [R. 156] which deals with civil contempt, rather than under Section 166, subdivision 4, of the Penal Code which deals with criminal contempt. (*Cf. In re Morris,* 194 Cal. 63, 67; 17 C. J. S., Sec. 7, p. 8.) However, there is no need for this Court to determine whether the contempt herein is civil or criminal in nature for the reason that, if criminal, petitioner has no standing either to prosecute this appeal or to raise constitutional issues affecting petitioner's claimed rights, the sole party in interest being the Superior Court of Los Angeles County; and if civil, then petitioner, by dismissing its complaint with prejudice, has lost its standing to assert constitutional rights and has rendered the case moot.

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II.

The Constitutionality of the California "Hot Cargo" Act, Considered by the California Supreme Court in the Blaney Case, Is Not Involved in the Present Appeal.

In the instant case the injunctive decree, for violation of which the contempt proceedings were instituted, was found to be invalid by the Supreme Court of California for the same reason that it held invalid the so-called "Hot Cargo" Act of California in the *Blaney* case, namely, because it was so loosely, broadly and vaguely worded as to previously restrain and impair the exercise by respondents of the fundamental right of free speech. Since the reasoning in the *Blaney* case was relied upon by the California Supreme Court in holding invalid the injunctive decree herein, it is claimed by petitioner that if the reasoning in the *Blaney* case is erroneous under decisions of this Court, then the California court's holding in the instant case must likewise be declared erroneous and the decision reversed. Aside from considerations of whether the adjudication in a contempt case can be used collaterally to obtain a review of a decision on constitutional law in another case (discussed in the brief for respondents Sylvane, Ford and Magisen and in the *amicus curiae* brief herein), the short answer to this contention of petitioner is that the *Blaney* case was decided on state as well as federal grounds, and the "Hot Cargo" Act held violative of the state as well as the federal Constitution.

The *Blaney* opinion is set forth in full commencing on page 181 of the Record herein. The gist of the opinion is that the "Hot Cargo" Act (which utilizes almost the identical language used in the injunctive decree herein) is so broadly, vaguely and loosely worded as to include the good with the bad and to prohibit activities protected as

an exercise of free speech along with activities not so protected, and thus to be invalid as a previous general restraint upon the exercise of fundamental rights. In support of this determination in the *Blaney* case, the Supreme Court of California cited numerous decisions of the California Supreme Court holding that peaceful picketing is protected as an aspect of free speech under both the federal and the state Constitutions.

Article I, Section 9, of the Constitution of the State of California reads as follows:

> "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

The *Blaney* decision quotes specifically from the recent decision of the Supreme Court of California in the case of *In re Porterfield,* 28 Cal. 2d 91, 168 P. 2d 706, as follows [R. 185]:

> "Various means of economic suasion such as picketing, the primary and secondary boycotts, and refusal to work together, often go to make up concerted efforts to induce nonmember employees to join a particular union. Such conduct may be performed in the exercise of civil liberties, *guaranteed by both our federal and state Constitutions."* (Emphasis supplied.)

The *Porterfield* decision contains the following additional language, indicating quite conclusively that California protects peaceful picketing as an aspect of free speech under the state as well as the federal Constitution:

> "The right of free speech, protected by the federal and state constitutional guaranties, is not an abso-

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lute right which carries with it into businesses and professions total immunity from regulation. . . .

"The main purpose of such constitutional provisions was to prevent previous restraint . . . or the stifling of efforts pointing towarding enlightenment of individuals upon or concerning their rights and beliefs and the duties of their rulers.

". . . The freedom of speech and of the press protected by the constitutional guaranties includes in the main, it has been said, freedom of expressions on political, sociological, religious and economic subjects, not commercial activities to which speech is only an incident or means."

The decision in the *Blaney* case, the reasoning of the many California cases dealing with the right of peaceful picketing as an aspect of free speech cited in the *Blaney* case, and the determination of both the majority and minority opinions in the very recent *Hughes v. Superior Court* case, 32 A. C. 896, all indicate that in California peaceful picketing is protected under California law as an aspect of free speech, and that the protection accorded peaceful picketing rests, or could rest, on state as well as federal grounds. Accordingly, the determination of the California Supreme Court that the "Hot Cargo" Act, as well as the injunctive decree herein, is unconstitutional is conclusive on this Court.

Bob-Lo Excursion Co. v. Michigan, 333 U. S. 28;
Memphis & Charleston Ry. Co. v. Pace, 282 U. S. 241.

Cf.:

Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U. S. 281.

While, in view of the foregoing, it is not the purpose of this brief to enter into a discussion concerning the

validity under federal law of the determination of the Supreme Court of California in the *Blaney* case, it should be noted that the reasoning of the California court in that case was in direct accord with the reasoning of at least four of the Justices of this Court, as expressed in the concurring opinion in the recent case of *United States v. C. I. O.*, 335 U. S. 106. There, Justice Rutledge, in an opinion concurred in by Justices Black, Douglas and Murphy, asserted as follows:

> "Vagueness and uncertainty so vast and all-pervasive seeking to restrict or delimit First Amendment freedoms are wholly at war with the long-established constitutional principles surrounding their delimitation. They measure up neither to the requirement of narrow drafting to meet the precise evil sought to be curbed nor to the one that conduct proscribed must be defined with sufficient specificity not to blanket large areas of unforbidden conduct with doubt and uncertainty of coverage."

The "sweeping and highly indefinite restrictions" placed upon the activities of respondents under the injunctive decree in the present case are similarly destructive of constitutional guarantees. Under the provisions of the decree, respondents could attempt to engage in peaceful persuasion or peaceful advocacy of their cause in an effort to enlist the help of others in their labor dispute only at their peril. Such a previous general restraint cannot comport with the dictates of this Court in such cases as *Thornhill v. Alabama*, 310 U. S. 88, and *DeJonge v. Oregon*, 299 U. S. 353, even if it were assumed, contrary to the rationale of *Bakery & Pastry Drivers v. Wohl*, 315 U. S. 769, and *American Federation of Labor v. Swing*, 312 U. S. 321, that secondary activity involved herein or in the *Blaney* case itself were subject to prohibition.

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III.

Petitioner Is Not in a Position to Assert That It Has Been Denied Rights Under the Federal Constitution, Even Assuming That There Is Merit in Such Contention, Which Respondents Deny.

The assertion by petitioner that it has been denied due process and equal protection of the law in violation of the Fourteenth Amendment is equally unavailing.

A. The California Courts Did Not Deny Petitioner Relief.

To begin with, it should be noted that the California Supreme Court did not dismiss petitioner's complaint; it merely held that the temporary restraining order as drawn was insufficient and invalid under California law. For all that petitioner can tell, or, for that matter, for all that this Court can ascertain, petitioner may very well be entitled to all the relief he seeks under a decree more specifically and exactly drawn so as to meet the requirements of exactness as required by decisions of the California Supreme Court. In any event, as has been discussed above, petitioner, by voluntarily dismissing its complaint with prejudice, has precluded any assertion that it is being deprived of rights under the Fourteenth Amendment.

B. Petitioner Did Not Raise the Issue That It Was Denied Federal Rights Before the California Courts and Is Precluded From Doing so Here.

A thorough examination of the record herein indicates that at no time did petitioner raise the constitutional issue asserted under the second of its "Questions Presented" before this Court either as contained in its petition for writ of certiorari or in its final brief herein. Even peti-

tioner's Petition for Rehearing before the California Supreme Court, which might be expected to raise the claim that the petitioner was deprived of constitutional rights under the California decision, even though it might be argued that failure to raise such claim at any earlier stage in the proceedings was excusable for the reason that petitioner had no indication prior to the issuance of the California Supreme Court's decision herein that it might be deprived of constitutional rights, is barren of the assertion now being made. The Petition for Rehearing is set forth on pages 217-228 of the record. The petition is divided into four main headings which read as follows:

> "I—The Hot Cargo Secondary Boycott Law Is Not so Vague and Indefinite as to Warrant Its Being Held Invalid."
>
> "II—The Blaney Decision Should Be Reconsidered in the Light of the Petrillo Decision."
>
> "III—The Separability Clause Should Save This Legislation."
>
> "IV—Under the Rules of Equity the Injunction Was Good, the Acts Complained of Were All Done to Coerce the Employer to Commit an Unlawful Act."

Even under the heading numbered "IV" above, petitioner made no assertion that the decision of the Supreme Court of California deprives it of any constitutional rights. Thus, the California Supreme Court has not been afforded an opportunity to pass upon the issue for the first time raised in this Court. It is submitted that under established principles laid down by this Court petitioner should not be heard on its second question. See

Lynch v. New York, etc., 293 U. S. 52, 79 L. Ed. 191.

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C. Petitioner Ignores the Construction Placed on the Injunctive Decree Herein by the California Supreme Court.

Even if this Court were to permit inquiry into the question of whether petitioner has been denied rights under the Fourteenth Amendment by virtue of the decision of the California Supreme Court herein, it should be noted that petitioner's argument (pp. 47-48 of its brief) in support of this assertion is predicated upon a construction of the injunctive decree which has been specifically rejected by the California Supreme Court, namely, that the decree enjoined certain activities by defendant union and its agents *because* undertaken or done in furtherance of an alleged illegal object—requiring petitioner to sign a closed-shop contract illegal under federal law. The substance of petitioner's argument seems to be that, since the defendant union and its agents were engaging in various activities for an unlawful purpose (the requiring of a closed-shop contract), which activities caused petitioner irreparable damage in the operation of its business, it was entitled, as a matter of due process of law, to injunctive relief against such activities. Although petitioner does not cite or refer to *Truax v. Corrigan*, 257 U. S. 312, in support of this contention, the shades of that decision are certainly being revived despite its subsequent dissipation under the decision of this Court in *Senn v. Tile Layers' Protective Ass'n*, 301 U. S. 468. However, there is no need to discuss the possible application of any doctrine contained in *Truax v. Corrigan*, or to consider whether the due process concept requires that petitioner be accorded injunctive relief under the circumstances of this case, for the reason that the Supreme Court of California, in construing the injunctive relief, found specifically that

the decree was not premised upon or limited to a situation in which the ultimate object was the illegal obtaining of a closed-shop contract. It stated in this respect as follows [R. 216]:

> "But here the restraining order did not forbid the making of such demand [compelling employer to sign a closed-shop contract] or engaging in the labor activity for such purpose."

There is nothing in the decision of the California Supreme Court to indicate that had the decree been worded so as to include a reference to an illegal demand, the petitioner would not have been able to obtain the relief it sought. It is respectfully submitted that this Court is bound by the construction placed upon the restraining order herein by the Supreme Court of California, and that under such construction petitioner is in no position to allege any deprivation of rights because of refusal by the California court to approve the particular restraining order involved in this proceeding.

Petitioner seems to suggest that the construction of the California Supreme Court of the restraining order herein is a sham and is in disregard of the "hard realities" of the case. However, the injunctive decree speaks for itself in this respect, and under it neither the California Supreme Court nor, what is more to the point, the respondents herein could know that the activities which respondents were enjoined from engaging in involved or were limited to any alleged illegal object of obtaining a closed-shop agreement. Furthermore, as is disclosed by the record, even the trial court assumed that respondents' purpose was to bring about the unionization of petitioner's employees rather than the compelling of a closed-shop agreement [R. 170-172].

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D. PETITIONER HAS NO RIGHT, UNDER THE LAWS OF CALIFORNIA, TO RELIEF FROM ALLEGED "SECONDARY" ACTIVITIES OF RESPONDENTS.

As appears from its decision [R. 169-180], the theory of the trial court apparently was that even though the ultimate object might be solely the unionization of petitioner's employees, nevertheless the alleged secondary activity was illegal and justified the restraint itself regardless of any ultimate purpose. If, from this, petitioner attempts to argue (although it has not done so in its brief) that it has been deprived of rights under the Fourteenth Amendment because it has not been protected against the alleged secondary activity, the short answer is that such secondary activity is not illegal under California law. In a long line of decisions, commencing forty years ago in *Parkinson Co. v. Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, and affirmed as recently as November 1, 1948, in *Hughes v. Superior Court*, 32 A. C. 896, the Supreme Court of California has consistently held that "a secondary boycott, peacefully and properly conducted, is legal in California under the constitutional guarantee of the right of free speech."

In re Lyons, 27 Cal. App. 2d 293 at 306.

See also:

McKay v. Retail Automobile Salesmen, 16 Cal. 2d 311, 106 P. 2d 373;

Pierce v. Stablemen's Union, 156 Cal. 70, 103 Pac. 324;

Union Labor Hospital Asso. v. Vance Redwood Lumber Co., 158 Cal. 551;

Lisse v. Local Union, 2 Cal. 2d 312, 41 P. 2d 314;

Shafer v. Registered Pharmacists, 16 Cal. 2d 379, 106 P. 2d 403;

Lund v. Auto Mechanics, 16 Cal. 2d 374;

Smith Metropolitan Market v. Lyons, 16 Cal. 2d 389, 106 P. 2d 414;

Fortenbury v. Superior Court, 16 Cal. 2d 405, 106 P. 2d 411;

In re Bell, 19 Cal. 2d 488, 122 P. 2d 22;

Steiner v. Long Beach Local, 19 Cal. 2d 676;

In re Porterfield, 28 Cal. 2d 91, 168 P. 2d 706.*

E. Petitioner Has Not Been Denied Equal Protection of the Law.

Petitioner's argument that it has been denied equal protection of the law, assuming that it can be asserted at this late stage, seems to depend upon an alleged discrimination effected by the California Supreme Court as a result of its decision in *Northwestern Pacific Railway Co. v. Lumber and Saw Mill Workers*, 31 A. C. 448, 189 P. 2d 277, where the Court granted relief to a common carrier who, as a third party to a labor dispute, was being prevented from transporting certain merchandise to or from the plant where the primary dispute existed. That case is entirely distinguishable. For one thing, the alleged neutral itself and not the employer party to the labor dispute was the complainant. More important, however, was the fact that the complainant in the *Northwestern*

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*Compare the rule of law set forth in the foregoing cases with the rule of law relied upon by the majority of this Court in *Carpenters Local v. Ritter's Cafe*, 315 U. S. 722, footnote 1 therein. That the authorities cited in the foregoing footnote 1 are of doubtful validity. See Petition for Rehearing in *Carpenters Local v. Ritter's Cafe*, No. 527, Oct. Term, 1941, pp. 14-17.

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Railway case was a common carrier, and it was by virtue of this fact and because of the violence involved that the California Supreme Court granted the injunction. The California Supreme Court stated in this respect as follows:

> "Plaintiff as a railroad common carrier, is under a duty imposed by the constitution and statutes of this state to accept freight for transportation from all shippers and to refrain from discrimination in service rendered to them. Calif. Const., Art. 12, sec. 21; Public Utilities Act, Statutes 1915, page 115, as amended; Sections 13(b), 17, 19, General Laws, Act 6386; Civil Code, Sections 2169, 2170. . . . It has been held that interference with the performance by a common carrier of its duties, by union activities in a labor dispute with a third person may be enjoined. Burlington Transportation Co. v. Hathaway, 149 A. L. R. 1243. In the instant case it is clear from the evidence, including the complaint, that a case was made out by plaintiff in showing interference in the performance of its duties as a common carrier by the concerted activities of defendants in a labor dispute between defendants and third parties, the lumber company. The object of the activity as well as the means employed to accomplish it would thus be unlawful—preventing or attempting to prevent the carrier from carrying out its statutory obligations—hence injunctive relief would appear to be proper."

On page 13 of its brief the petitioner asserts that the conduct of the respondents herein on which they were adjudged guilty of contempt constituted an interference with common carriers. The record definitely shows that the conduct of the respondents consisted of picketing the product of the petitioner Farmer Bros. Company, a corporation, and that the common carriers are not parties to

this action nor complaining in any way. The record also shows that the product which was being picketed had come to rest and that it was being picked up by the respondent corporation, the owner thereof, in its own trucks and with its own employees.

F. Petitioner Has a Remedy, Indeed an Exclusive Remedy, Under the National Labor Relations Act as Amended.

A final consideration applicable to petitioner's contention that it has been deprived of rights under the Fourteenth Amendment by virtue of an alleged refusal by the California Supreme Court to grant it the relief it sought is whether petitioner has not a remedy, indeed an exclusive remedy, before the National Labor Relations Board under the provisions of the National Labor Relations Act as amended. Sections 8(b)(1), 8(b)(2) and 8(b)(4)(A) of that Act could embrace the activities complained of herein (see also Section 303). Since petitioner is admittedly engaged in interstate commerce, it would have access to the Board, and through the Board to the courts, for injunctive relief. Accordingly, it would be in no position to complain that it has been deprived of all remedy against alleged illegal conduct of the union. Moreover, since Congress has legislated specifically in respect to the activities involved in petitioner's complaint, it might well be that petitioner is relegated exclusively to the National Labor Relations Board for any relief. (*Cf. Hill v. Florida*, 325 U. S. 538; *Bethlehem Steel Co. v. New York State Board*, 330 U. S. 767; *Allen Bradley, Local 11, v.*

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Wisconsin Employment Relations Board, 315 U. S. 740.) We refrain from elaborating upon this aspect of the case for the reason that the Supreme Court of California has had no opportunity to consider the question, but raise the issue merely as further indication of the insufficiency of any claim by petitioner that it has been denied rights under the Fourteenth Amendment.

Conclusion.

For the foregoing reasons it is respectfully submitted that the proceedings herein be dismissed, and that the decision of the court below be affirmed.

Respectfully submitted,

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